had to answer. *Washington Gas Light Co.* v. *District of Columbia*, 161 U. S. 316; *Inhabitants of Westfield* v. *Mayo*, 122 Mass. 100; *City of Astoria* v. *Astoria & C. R. Co.*, 67 Ore. 538, 136 Pac. 645; see 4 DILLON, MUNICIPAL CORPORATIONS, 5 ed., §§ 1727–1730; BISHOP, NON-CONTRACT LAW, § 535. In situations of this character, although the negligent parties may be jointly liable to third persons, as between themselves they are not *in pari delicto*, for one merely stands sponsor for the exercise of due care by the other, and the one subject to the primary duty incurs the ultimate liability. *Gray* v. *Boston Gaslight Co.*, 114 Mass. 149; *Oceanic Steam Nav. Co.* v. *Compania Transatlantica Espanola*, 134 N. Y. 461, 31 N. E. 987, 144 N. Y. 663, 39 N. E. 360; *Central of Georgia R. Co.* v. *Macon Ry. & Light Co.*, 140 Ga. 309, 78 S. E. 931. Despite the concurring breach of duty, the principles of contributory negligence do not apply, for the right to indemnity is determined, not by comparing the efficiency of the negligence of each in causing the resulting loss, but by ascertaining the duties of the wrongdoers *inter se*. See 21 HARV. L. REV. 233, 242. But *cf. Nashua Steel and Iron Co.* v. *Worcester & Nashua R. Co.*, 62 N. H. 159. The result of the principal case is the more easily reached because of the anomalous doctrine of the Pennsylvania courts that the parties here, though equally liable to the outsider, are not chargeable as joint tortfeasors. *Dutton* v. *Borough of Lansdowne*, 198 Pa. St. 563, 48 Atl. 494. See *Brookville Borough* v. *Arthurs*, 130 Pa. St. 501, 515, 18 Atl. 1076, 1077; 15 HARV. L. REV. 159.

LIBEL AND SLANDER — DEFENSES — LIBEL OF BUSINESS CONDUCTED IN VIOLATION OF STATUTE. — The plaintiffs were engaged in the milk business, under the name of "The Lambert Dairy Company," in violation of a statute which made it a misdemeanor to conduct business under an assumed name without filing a certificate showing both the fictitious and the actual names of the participants. The defendant accused the dairy company of selling adulterated milk. The plaintiffs bring an action of libel for injury to the business. *Held*, that they cannot recover. *Williams* v. *New York Herald Co.*, 150 N. Y. Supp. 838 (App. Div.).

The statute in the principal case was probably designed to protect creditors and would not of itself be a defense for ordinary tortfeasors. *Wood* v. *Erie R. Co.*, 72 N. Y. 196. Hence, if the plaintiffs were suing for injury to their individual reputations, it seems that recovery should be allowed. *Long* v. *Chubb*, 5 C. & P. 55. This would accord with the general doctrine that a plaintiff's illegal conduct, unless a proximate cause, is no bar to his action. *Sutton* v. *Wauwatosa*, 29 Wis. 21. See 18 HARV. L. REV. 505; 27 HARV. L. REV. 317, 338. Even where the action is for damage to the plaintiffs in their business, as in the principal case, their illegality would not be a good defense by way of justification. *Rutherford* v. *Paddock*, 180 Mass. 289, 62 N. E. 381. But the breach of the statute does go to the merits of their right to maintain an action. For it seems impracticable to differentiate between an interference with the profits of an illegal business, and with the profits of an otherwise legal business carried on under an unlawful name. The profits, then, being those of an illegal undertaking, the plaintiffs cannot complain that they have been diminished. The cases which deny recovery to an unlicensed physician when his professional reputation is libelled seem closely analogous. *Hargan* v. *Purdy*, 93 Ky. 424, 20 S. W. 432; see *Collins* v. *Carnegie*, 1 A. & E. 695; *Marsh* v. *Davison*, 9 Paige (N. Y.) 580. It is possible that recovery might also be denied on the ground that, towards a business illegally conducted, there exists no duty with regard to the use of words. See *Johnson* v. *Irasburgh*, 47 Vt. 28; 27 HARV. L. REV. 317, 339.

LIFE ESTATES — RECOVERY BY LIFE TENANT FOR INJURY TO THE INHERITANCE: RELATION TO LIABILITY FOR PERMISSIVE WASTE. — The plaintiff, a

tenant for life of land, with remainder to another in fee, sues a stranger for injury to the property caused by the stranger's negligence in allowing the fire to spread. *Held*, that he may recover for the injury both to his interest and to that of the remainderman. *Rogers* v. *Atlantic, Gulf & Pacific Co.*, 213 N. Y. 246, 107 N. E. 661.

The principal case definitely discards the doctrine of the older cases, which based the life tenant's right to recover for injury to the remainder on the hypothesis that the stranger's negligence rendered the life tenant liable for waste. See *Austin* v. *Hudson R. R. Co.*, 25 N. Y. 334, 344. Some cases even required actual payment to the remainderman before permitting the particular tenant to recover in full. *Wood* v. *Griffin*, 46 N. H. 230, 239. Under the old law, this line of reasoning was possible, for a life tenant was punishable for waste committed by a stranger. *Anonymous*, FITZ. ABR., WASTE, pl. 30. See ST. OF GLOUCESTER, 6 EDW. I., c. 5. Under modern English law, however, a tenant for life is not liable for permissive waste. *In re Cartwright*, 41 Ch. D. 532. The same result has been reached in this country as to accidental fires. *Sampson* v. *Grogan*, 21 R. I. 174, 42 Atl. 712. See 13 HARV. L. REV. 151. And the principal case, in line with the modern tendency, decides that negligent injury by a stranger does not make the life tenant liable for waste. But it nevertheless permits him to recover full damages, by analogy to the rule which allows a bailee to recover against a wrongdoer, even when not liable to the bailor. See *The Winkfield*, [1902] P. 42. The analogy is not perfect, for life tenant and remainderman have such distinct estates that each would be expected to recover simply for the injury to his own interest. *Zimmerman* v. *Shreeve*, 59 Md. 357; *cf. McIntire* v. *Westmoreland Coal Co.*, 118 Pa. St. 108. *Cf. Rockwood* v. *Robinson*, 159 Mass. 406, 34 N. E. 521. In the ordinary case, moreover, it involves no assertion of the *jus tertii* for the wrongdoer to set up that the tenant has only a life estate and should be limited accordingly in his recovery. *Illinois, etc. Coal Co.* v. *Cobb*, 94 Ill. 55. Procedural convenience, however, affords ample justification for the result of the principal case. It permits the whole controversy to be settled in one action, and at the same time adequately protects the remainderman by imposing a trust in his favor on what the tenant recovers in excess of his own interest.

MASTER AND SERVANT — EMERGENCY DUTY TO SUMMON MEDICAL ASSISTANCE TO INJURED EMPLOYEE. — Plaintiff's intestate, an employee in defendant's stone quarry, was run over by a car which severely crushed and lacerated his leg. The accident occurred without defendant's fault. By reason of the negligent delay of defendant's superintendent in summoning a physician, the employee bled to death. His administrator sues the defendant company. *Held*, that he may recover. *Hunicke* v. *Meramec Quarry Co.*, 172 S. W. 43 (Mo.).

For a discussion of this case, see NOTES, p. 607.

NEGLIGENCE — DEFENSES — INJURY SUSTAINED IN SAVING LIFE ENDANGERED BY ANOTHER'S NEGLIGENCE. — The engineer's negligent handling of a train threatened collision with a caboose in which there were several persons. To avoid this, a brakeman stepped in front of the moving train and attempted to apply the emergency air brake. *Held*, that he may recover from the railroad for the injuries sustained. *Haigh* v. *Grand Trunk Pacific Ry. Co.*, 30 West. L. R. 173 (Alberta).

The plaintiff, noticing a train approaching, tried to remove a small push car which he had wrongfully placed upon defendant's tracks, but was injured by reason of negligence on the part of the engineer after discovery of the plaintiff's danger. *Held*, that the plaintiff may recover. *Great Northern Ry. Co.* v. *Harman*, 217 Fed. 959 (C. C. A., 9th Circ.).